



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R09-OAR-2019-0393; FRL-9997-60-Region 9]

Partial Approval, Partial Disapproval and Promulgation of State Plans for Designated Facilities and Pollutants; California; Control of Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove a Clean Air Act (CAA) section 111(d) plan submitted by the California Air Resources Board (CARB) to implement the EPA's Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (Emission Guidelines). This state plan submittal pertains to the regulation of landfill gas and its components from existing municipal solid waste (MSW) landfills. We are partially approving the state plan because it meets many of the requirements of the Emission Guidelines; however, we are partially disapproving the state plan because it does not fully address certain provisions of the Emission Guidelines.

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019--0393 at <http://www.regulations.gov>, or via email to buss.jeffrey@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once

submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947-4152, buss.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 29, 2016, the EPA finalized Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills in 40 CFR part 60, subpart Cf, pursuant to section 111(d) of the CAA.¹ Section 111(d) of the CAA requires the EPA to establish a procedure for a state to submit a plan to the EPA which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a

¹ 81 FR 59276 (August 29, 2016).

list published under section 108(a) or emitted from a source category which is regulated under section 112 but (ii) to which a standard of performance under section 111 would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. The EPA has established requirements for state plan submittals in 40 CFR part 60, subpart B, and established Emission Guidelines for the control of designated pollutants² from certain MSW landfills. State submittals under CAA section 111(d) must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart Cf, and the requirements of 40 CFR part 60, subpart B, and part 62, subpart A.

On May 30, 2017, CARB submitted to the EPA a section 111(d) plan for existing MSW landfills, the “California State Plan for Compliance with the Federal Emission Guidelines for Municipal Solid Waste Landfills” (California plan). The plan was submitted in response to the August 29, 2016 promulgation of Federal emission guidelines requirements for MSW landfills, 40 CFR part 60, subpart Cf.

II. Summary of the Plan and EPA Analysis

The EPA has reviewed the California plan in the context of the requirements of 40 CFR part 60, subparts B and Cf, and part 62, subpart A. In this action, the EPA is proposing to partially approve the California plan as meeting the above-cited requirements as they pertain to landfill gas, and to partially disapprove the California plan because it omits the following operational, monitoring, recordkeeping and corrective action requirements relative to

² Designated pollutant means any air pollutant, the emissions of which are subject to a standard of performance for new stationary sources, but for which air quality criteria have not been issued and that is not included on a list published under section 108(a) or section 112(b)(1)(A) of the Act. 40 CFR 60.21.

temperature and/or oxygen or nitrogen: 40 CFR 60.34f(c), 60.36f(a)(5), 60.37f(a)(2) and (3), 60.38f(k), and 60.39f(e)(2) and (5).

The primary mechanism selected by CARB to implement the emission guidelines for MSW landfills under state jurisdiction is through a demonstration that its MSW landfill regulations, “Methane Emissions from Municipal Solid Waste Landfills,” are no less stringent than 40 CFR part 60, subpart Cf.³ The California plan will be federally applicable to MSW landfills in California upon the EPA’s partial approval of the plan by final rulemaking. The EPA intends to address the aspects of the California plan underlying our proposed partial disapproval in a subsequent rulemaking when we promulgate a Federal plan to implement subpart Cf.⁴

The federally regulated pollutant under subpart Cf is MSW landfill emissions. While the stated purpose of California’s MSW regulations is to “reduce methane from [MSW] landfills pursuant to the California Global Warming Solutions Act of 2008,”⁵ the California plan demonstrates that the control of methane simultaneously controls landfill gas because “the control system does not distinguish the compounds within the landfill gas.”⁶ Also, with this proposed partial approval and partial disapproval, the EPA’s approval of the California plan is limited to those landfills that meet the criteria established in subpart Cf.⁷ A detailed explanation of the rationale behind this proposed partial approval and partial disapproval is available in the EPA’s Technical Support Document (TSD).

III. Proposed Action

³ California’s MSW landfill regulations are codified at title 17 California Code of Regulations (CCR) CCR 95460-95476.

⁴ The EPA is required to promulgate regulations setting forth a Federal plan on or before November 6, 2019. *State of California v. EPA*, No. 4:18-cv-03237 (N.D. Cal. 2019).

⁵ 17 CCR 95460.

⁶ California plan at 7.

⁷ *Id.*

Pursuant to 40 CFR 60.27, the EPA is proposing to partially approve and partially disapprove the California plan for MSW landfills submitted pursuant to 40 CFR part 60, subparts B and Cf. Therefore, the EPA is proposing to amend 40 CFR part 62, subpart F, to reflect this action. In addition, if the EPA finalizes this action as proposed, we intend to subsequently take action to update 40 CFR part 62, subpart F, upon promulgation of the Federal plan to identify the specific provisions corresponding to 40 CFR 60.34f(c), 60.36f(a)(5), 60.37f(a)(2) and (3), 60.38f(k), and 60.39f(e)(2) and (5) that MSW landfills in California will have to implement (in addition to the requirements of the state plan we are proposing to take action on today). Finally, the EPA's approval of the California plan is limited to those landfills that meet the criteria established in subpart Cf. This proposed partial approval and partial disapproval is based on the rationale discussed above and in the EPA's TSD associated with this action.

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference of the California plan. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference CARB rules regarding MSW landfills discussed in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov>, Docket ID No. EPA-R09-OAR-2019-0393, and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This proposed action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the section 111(d) plan is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

I. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise

impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Landfills, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: July 23, 2019.

Michael B. Stoker,
Regional Administrator,
Region IX.

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